

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GRANT PASWALL and REID PASWALL,

Appellants,

v.

MARK S. TULIS,

Appellee.

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ORDER TO SHOW CAUSE

No. 22-CV-08161 (PMH)

PHILIP M. HALPERN, United States District Judge:

The above-captioned bankruptcy appeal was assigned to me for all purposes on March 3, 2023. The order appealed from was entered on June 21, 2022, and this appeal was docketed in the District Court on September 23, 2022. (Doc. 1).

As an initial matter, it is not clear that Appellants' notice of appeal was timely filed pursuant to Rule 8002(a) of the Federal Rules of Bankruptcy Procedures ("FRBP"). "This time limit is jurisdictional and 'in the absence of a timely notice of appeal in the district court, the district court is wholly without jurisdiction to consider the appeal, regardless of whether the appellant can demonstrate 'excusable neglect.'" *In re Abraham*, No. 21-CV-01628, 2021 WL 5597939, at *3 (S.D.N.Y. Nov. 30, 2021) (quoting *In re Siemon*, 421 F.3d 167, 169 (2d Cir. 2005)).

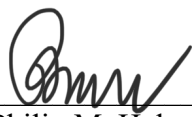
Further, FRBP 8009 requires appellant to file "a designation of the items to be included in the record on appeal and a statement of the issues to be presented" within 14 days after the notice of appeal becomes effective under FRBP 8002. Failure to do so can be grounds for dismissal. *See In re Lynch*, 430 F.3d 600, 603 (2d Cir. 2005); Fed. R. Bankr. P. 8003(a)(2) ("An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground . . . for the district court . . . to act as it considers

appropriate, including dismissing the appeal.”).

Accordingly, it is ORDERED that no later than 5:00 p.m. on March 10, 2023, Appellants show cause in writing by letter limited to five pages filed via ECF, why this appeal should not be dismissed under (1) 28 U.S.C. § 158(c)(2) and FRBP 8002(a) as untimely; and (2) under FRBP 8003(a)(2) for failure to perfect or prosecute.

SO ORDERED:

Dated: White Plains, New York
March 6, 2023



Philip M. Halpern
United States District Judge